In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1645

RAYMOND PAUL GREEN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a non-jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted of possession of 29 copper plates, with intent to use them to counterfeit United States obligations, in violation of 18 U.S.C. 474. Petitioner was sentenced to five years' imprisonment. Execution of the prison term was suspended and petitioner was placed on probation for five years. The court of appeals affirmed (Pet. App. A 1-A13).

The facts are fully detailed in the opinion of the court of appeals. Briefly, they show that on December 9, 1970, a fire broke out in petitioner's apartment located in a Jacksonville, Florida apartment building. At least two fire trucks and a number of firemen, including the fire chief, responded to the alarm. The fire chief, being unable to find the cause of the blaze, requested Henry Melzer,

the assistant fire chief and deputy state fire marshal for the city of Jacksonville, to come to the scene for the purpose of determining the fire's origin. When Melzer arrived at the scene, the fire had been extinguished. Petitioner was not present at this time.

Melzer's investigation soon centered on a square box on the kitchen floor which had charred embers in it. In the course of examining the contents of the box, several metal plates came to Melzer's attention. He eventually concluded that the fire resulted from spontaneous combustion caused by a chemical reaction between the metal of the copper printing plates, rags, and possibly cleaning fluid that may have been placed on the plates to preserve them.

On closer examination, the assistant fire chief discovered that one of the plates had the image of a $20.00 Federal Reserve Note. Melzer suspected that the plate was probably a counterfeiting plate and promptly contacted Secret Service Agent Varenholt. When Varenholt arrived at the scene, he was handed the plates, which had already been removed from the box. He determined on the basis of a quick inspection that they were capable of printing a counterfeit impression. Subsequent to the examination of the plates by Varenholt, petitioner returned to the apartment and was placed under arrest.

Petitioner's claims—that the discovery and seizure of the plates went beyond the scope of the justification for the initial entry by fire officials and that the federal officer should have secured a warrant prior to entering the premises to confirm that the plates were contraband—were thoroughly considered and properly rejected by the court below, upon whose opinion we principally rely. We add this brief comment regarding petitioner's claim that the holding of the court of appeals

was based on the "erroneous factual premise" (Pet. 8) that the deputy fire marshal, who was lawfully in petitioner's apartment and who happened to come upon the plates, was a "law enforcement" officer (Pet. 9-12). While the court of appeals relied upon Florida statutes detailing the authority of deputy fire marshals (Pet. App. A9, n. 2), it is immaterial to the application of the "plain view" doctrine whether the state official is designated as a law enforcement officer. If anything, the fact that the deputy fire marshal was not involved in the enforcement of the counterfeiting laws shows that the discovery was truly "inadvertent." *Coolidge* v. *New Hampshire*, 403 U.S. 443, 464-471.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

AUGUST 1973.

DOJ-1973-08